

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RD PETITION

DO NOT WRITE IN THIS SPACE

Case No.
19-RD-203378

Date Filed
7-31-17

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer Apple Bus Company		2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 34234 Industrial Street AK Soldotna 99669	
3a. Employer Representative - Name and Title Julie Cisco General Manager-Alaska		3b. Address (if same as 2b - state same) 34234 Industrial Street AK Soldotna 99669	
3c. Tel. No. (907) 262-4900	3d. Cell No.	3e. Fax No. (907) 262-4940	3f. E-Mail Address julie.cisco@applebuscompany.com
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Transportation		4b. Principal product or service School Bus Drivers and Attendants	
5a. City and State where unit is located: Soldotna, AK			6a. No. of Employees in Unit: 128
5b. Description of Unit Involved Included: See Attached Page 2 for additional details Excluded: See Attached Page 2 for additional details			6b. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Check One: ☐ **7a.** Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) (If no reply received, so state).
☐ **7b.** Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent General Teamsters Local 959 Michael Petrovich Union Representative		8b. Address PO Box 3150 AK Kenai 99611-3150	
8c. Tel No. (907) 283-4498	8d. Cell No. (907) 244-1596	8e. Fax No. (907) 283-8030	8f. E-Mail Address mpetrovich@alaskateamsters.com
8g. Affiliation, if any Teamsters International		8h. Date of Recognition or Certification 02/29/2008	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No. If so, approximately how many employees are participating? _____
(Name of labor organization) _____, has picketed the Employer since (Month, Day, Year) _____.

10. Organizations or individuals other than those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address
11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election. 11b. Election Date(s): August 14th, 2017		11a. Election Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail 11d. Election Location(s): Soldotna, Homer, Seward	
11c. Election Time(s): 8AM - 5PM		12a. Full Name of Petitioner (b) (6), (b) (7)(C)	
		12b. Address (street and number, city, state, and ZIP code) (b) (6), (b) (7)(C)	

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state) AK Kasilof 99610-9303
General Teamsters 959 State of Alaska

12d. Tel No. (b) (6), (b) (7)(C)	12e. Cell No.	12f. Fax No.	12g. E-Mail Address (b) (6), (b) (7)(C)
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13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title Glenn M. Taubman National Right to Work Foundation		13b. Address (street and number, city, state, and ZIP code) 8001 Braddock Rd Ste 600 VA Springfield 22151-2110	
13c. Tel No. (703) 321-8510	13d. Cell No.	13e. Fax No. (703) 321-9319	13f. E-Mail Address gmt@nrtw.org

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) (b) (6), (b) (7)(C)	Signature (b) (6), (b) (7)(C)	Title	Date 07/31/2017 08:52:15
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WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

Employees Included

All full time and Regular Part time school Bus Drivers, special service drivers, monitors and attendants

Employees Excluded

All office clerical employees, mechanics, school crossing guards, dispatchers, guards and supervisors



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Agency Website: www.nlrb.gov
Telephone: (206)220-6300
Fax: (206)220-6305



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July 31, 2017

URGENT

julie.cisco@applebuscompany.com

Julie Cisco, General Manager-Alaska
Apple Bus Company
34234 Industrial St.
Soldotna, AK 99669

Re: Apple Bus Company
Case 19-RD-203378

Dear Ms. Cisco:

Enclosed is a copy of a petition that (b) (6), (b) (7)(C) filed with the National Labor Relations Board (NLRB) seeking to decertify General Teamsters Local 959 as the collective-bargaining representative of certain of your employees. After a petition is filed, the employer is required to promptly take certain actions so please read this letter carefully to make sure you are aware of the employer's obligations. This letter tells you how to contact the Board agent who will be handling this matter, about the requirement to post and distribute the Notice of Petition for Election, the requirement to complete and serve a Statement of Position Form, a scheduled hearing in this matter, other information needed including a voter list, your right to be represented, and NLRB procedures.

Investigator: This petition will be investigated by Field Examiner TRAVIS WILLIAMS whose telephone number is (206)220-6321. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Field Examiner DIANNE TODD whose telephone number is (206)220-6319. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Required Posting and Distribution of Notice: You must post the enclosed Notice of Petition for Election by August 2, 2017 in conspicuous places, including all places where notices to employees are customarily posted. The Notice of Petition for Election must be posted so all pages are simultaneously visible. If you customarily communicate with your employees electronically, you must also distribute the notice electronically to them. You must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Posting and distribution of the Notice of Petition for Election will inform the employees whose representation is at issue and the employer of their rights and obligations under the National Labor Relations Act in the representation context. Failure to post or distribute the notice may be grounds for setting aside an election if proper and timely objections are filed.

Required Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the employer is required to complete the enclosed Statement of Position form (including the attached Commerce Questionnaire), have it signed by an authorized representative, and file a completed copy (with all required attachments) with this office and serve it on all parties named in the petition such that it is received by them by **noon Pacific Time on August 7, 2017**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form may be e-Filed, but unlike other e-Filed documents, will *not* be timely if filed on the due date but after noon August 7, 2017.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

List(s) of Employees: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the

appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **9:00 AM on Tuesday, August 8, 2017** at a place **TBD, Soldotna, AK**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party, the regional director may postpone the hearing for up to 2 business days upon a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Other Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any of your employees in the unit involved in the petition (the petitioned-for unit);
- (b) The name and contact information for any other labor organization (union) claiming to represent any of the employees in the petitioned-for unit;
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) If you desire a formal check of the showing of interest, you must provide an alphabetized payroll list of employees in the petitioned-for unit, with their job classifications, for the payroll period immediately before the date of this petition. Such a payroll list should be submitted as early as possible prior to the hearing. Ordinarily a formal check of the showing of interest is not performed using the employee list submitted as part of the Statement of Position.

Voter List: If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular telephone numbers) of eligible voters. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. I am advising you of this

requirement now, so that you will have ample time to prepare this list. When feasible, the list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or at the Regional office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Also enclosed is a Description of Procedures in Certification and Decertification Cases (Form NLRB-4812). We strongly urge everyone to submit documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. E-Filing your documents places those documents in our official electronic case files. On all your correspondence regarding the petition, please include the case name and number indicated above.

Information about the NLRB and our customer service standards is available on our website, www.nlr.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



RONALD K. HOOKS
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19



APPLE BUS COMPANY

Employer

and

(b) (6), (b) (7)(C) an Individual

Petitioner

and

GENERAL TEAMSTERS LOCAL 959

Union

Case 19-RD-203378

NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:00 AM on **Tuesday, August 8, 2017** and on consecutive days thereafter until concluded, at a place to be determined, Soldotna, AK, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Apple Bus Company and General Teamsters Local 959 must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Pacific time on August 7, 2017. The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Pacific on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: July 31, 2017

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 2nd Ave., Ste. 2948
Seattle, WA 98174-1006



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July 31, 2017

URGENT

mpetrovich@akteamsters.com

Michael Petrovich, Union Representative
General Teamsters Local 959
PO Box 3150
Kenai, AK 99611-3150

Re: Apple Bus Company
Case 19-RD-203378

Dear Mr. Petrovich:

Enclosed is a copy of a decertification petition filed by (b) (6), (b) (7)(C) regarding certain employees of Apple Bus Company. This letter tells you how to contact the Board agent who will be handling this matter, the requirement to complete, file and serve a Statement of Position Form, notifies you of a hearing, explains your right to be represented, requests that you provide certain information, and discusses some of our procedures including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Examiner TRAVIS WILLIAMS whose telephone number is (206)220-6321. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Field Examiner DIANNE TODD whose telephone number is (206)220-6319. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Required Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the Union is required to complete a Statement of Position form (Form NLRB-505), have it signed by an authorized representative, and file a completed copy with this office and serve it on all parties named in the petition by **noon Pacific Time on August 7, 2017. This form may be e-Filed but unlike other e-Filed documents will *not* be timely if filed on the due date but after noon Pacific Time.** The Union, as a non-employer party, is NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

The Employer is also required to file a Statement of Position which is due at the same time as the Union's Statement of Position. The Employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed

at the time of filing. If the Employer contends that the proposed unit is inappropriate, it must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The Employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit.

Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **9:00 AM on Tuesday, August 8, 2017** at a place **TBD, Soldotna, AK**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party, the regional director may postpone the hearing for up to 2 business days upon a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is

preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Posting and Distribution of Notice: The Employer must post the enclosed Notice of Petition for Election by August 2, 2017 in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates with its employees electronically, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

Other Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) The correct name of the Union as stated in its constitution or bylaws.
- (b) A copy of any existing or recently expired collective-bargaining agreements, and any addenda or extensions, or any recognition agreements covering any employees in the petitioned-for unit.
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) The name and contact information for any other labor organization (union) claiming to represent or have an interest in any of the employees in the petitioned-for unit and for any employer who may be a joint employer of the employees in the proposed unit. Failure to disclose the existence of an interested party may delay the processing of the petition.

Voter List: If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular telephone numbers) of eligible voters. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. I am advising you of this requirement now, so that you will have ample time to prepare this list. When feasible, the list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the voter list with the Regional Office. However, a petitioner and/or union entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483, which is available on the NLRB's website or from an NLRB office. A waiver will not be effective unless all parties who are entitled to the voter list agree to waive the same number of days.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

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Information about the NLRB and our customer service standards is available on our website, www.nlr.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



RONALD K. HOOKS
Regional Director

Enclosures

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3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19



APPLE BUS COMPANY

Employer

and

(b) (6), (b) (7)(C) an Individual

Petitioner

and

GENERAL TEAMSTERS LOCAL 959

Union

Case 19-RD-203378

NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:00 AM on **Tuesday, August 8, 2017** and on consecutive days thereafter until concluded, at a place to be determined, Soldotna, AK, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Apple Bus Company and General Teamsters Local 959 must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Pacific time on August 7, 2017. The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Pacific on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: July 31, 2017

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 2nd Ave., Ste. 2948
Seattle, WA 98174-1006



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Agency Website: www.nlr.gov
Telephone: (206)220-6300
Fax: (206)220-6305



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July 31, 2017

URGENT

gmt@nrtw.org

Glenn M. Taubman
National Right to Work Foundation
8001 Braddock Rd., Ste. 600
Springfield, VA 22151-2110

Re: Apple Bus Company
Case 19-RD-203378

Dear Mr. Taubman:

The enclosed petition that you filed with the National Labor Relations Board (NLRB) has been assigned the above case number. This letter tells you how to contact the Board agent who will be handling this matter; explains your obligation to provide the originals of the showing of interest; notifies you of a hearing; describes the employer's obligation to post and distribute a Notice of Petition for Election, complete a Statement of Position and provide a voter list; requests that you provide certain information; notifies you of your right to be represented; and discusses some of our procedures including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Examiner TRAVIS WILLIAMS whose telephone number is (206)220-6321. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Field Examiner DIANNE TODD whose telephone number is (206)220-6319. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Showing of Interest: If the Showing of Interest you provided in support of your petition was submitted electronically or by fax, the original documents which constitute the Showing of Interest containing handwritten signatures must be delivered to the Regional office within **2 business days**. If the originals are not received within that time the Region will dismiss your petition.

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **9:00 AM on Tuesday, August 8, 2017** at a place **TBD, Soldotna, AK**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, we will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party, the regional director may postpone the hearing for up to 2 business days upon a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Posting and Distribution of Notice: The Employer must post the enclosed Notice of Petition for Election by August 2, 2017 in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates with its employees electronically, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the Employer and the Union are required to complete the enclosed Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition by **noon Pacific Time on August 7, 2017**. The Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the Employer contends that the proposed unit is inappropriate, it must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The Employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit.

Voter List: If an election is held in this matter, the Employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names and addresses of all eligible voters, including their shifts, job classifications, work locations, and other contact information including available personal email addresses and available personal home and cellular telephone numbers. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. When feasible, the list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the voter list with the Regional Office. However, a petitioner and/or union entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483, which is available on the NLRB's website or from an NLRB office. A waiver will not be effective unless all parties who are entitled to the voter list agree to waive the same number of days.

Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) The correct name of the Union as stated in its constitution or bylaws.
- (b) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any employees in the petitioned-for unit.
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) The name and contact information for any other labor organization (union) claiming to represent or have an interest in any of the employees in the petitioned-for unit and for any employer who may be a joint employer of the employees in the proposed unit. Failure to disclose the existence of an interested party may delay the processing of the petition.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Also enclosed is a Description of Procedures in Certification and Decertification Cases (Form NLRB-4812). We strongly urge everyone to submit documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. On all your correspondence regarding the petition, please include the case name and number indicated above.

Information about the NLRB and our customer service standards is available on our website, www.nlr.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



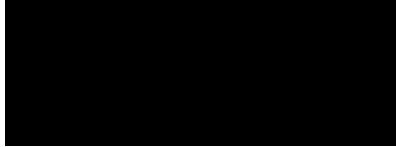
RONALD K. HOOKS
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)

cc:

(b) (6), (b) (7)(C)





UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19



APPLE BUS COMPANY

Employer

and

(b) (6), (b) (7)(C), an Individual

Petitioner

and

GENERAL TEAMSTERS LOCAL 959

Union

Case 19-RD-203378

NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:00 AM on **Tuesday, August 8, 2017** and on consecutive days thereafter until concluded, at a place to be determined, Soldotna, AK, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Apple Bus Company and General Teamsters Local 959 must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Pacific time on August 7, 2017. The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Pacific on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: July 31, 2017

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 2nd Ave., Ste. 2948
Seattle, WA 98174-1006

FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

APPLE BUS COMPANY
Employer
and
(b) (6), (b) (7)(C), an Individual
Petitioner
and
GENERAL TEAMSTERS LOCAL 959
Union

CASE 19-RD-203378

☒ REGIONAL DIRECTOR☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF _____

General Teamsters Local 959

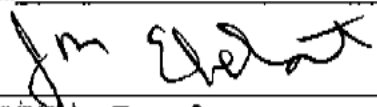
IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: John Eberhart, General Counsel	
MAILING ADDRESS: 520 E. 34th Avenue, Suite 102, Anchorage AK 99503	
E-MAIL ADDRESS: jeberhart@akteamsters.com	
OFFICE TELEPHONE NUMBER: (907) 751 8563	
CELL PHONE NUMBER: (907) 301 4831	FAX: (907) 751 8595
SIGNATURE: 	
DATE: (Please sign in ink.) 7. August 2017	

¹ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

APPLE BUS COMPANY

Employer

and

Case 19-RD-203378

(b) (6), (b) (7)(C)

Petitioner

and

GENERAL TEAMSTERS LOCAL 959

Union

ORDER SETTING PLACE OF HEARING

IT IS HEREBY ORDERED that the hearing for August 8, 2017 will be held at 10:00 AM at the Soldotna Public Library Central Library, Conference Room B, 235 N. Binkley St, Soldotna, Alaska. The hearing shall continue on consecutive days thereafter until concluded.

DATED at Seattle, Washington on the 1st day of August 2017

/s/ Ronald K. Hooks

RONALD K. HOOKS, REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 19
915 2ND AVE, STE 2948
SEATTLE, WA 98174-1006

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

APPLE BUS COMPANY

Employer

and

Case 19-RD-203378

(b) (6), (b) (7)(C)

Petitioner

and

GENERAL TEAMSTERS LOCAL 959

Union

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter is rescheduled from August 8, 2017 to 10:00 AM on **Friday, August 11, 2017** at **Conference room B., Soldotna Public Library Central Library, 235 N. Binkley St., Soldotna, AK 99669**. The hearing will continue on consecutive days until concluded.

The Statement of Position in this matter must be filed with the Regional Director and served on the parties listed on the petition by no later than **noon** Pacific time on August 10, 2017. The Statement of Position may be e-Filed but, unlike other e-Filed documents, must be filed by noon Pacific time on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: August 7, 2017

/s/ ***Ronald K. Hooks***

RONALD K. HOOKS, REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 19
915 2ND AVE STE 2948
SEATTLE, WA 98174-1006

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

APPLE BUS COMPANY

Employer

and

Case 19-RD-203378

(b) (6), (b) (7)(C)

Petitioner

and

GENERAL TEAMSTERS LOCAL 959

Union

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter is rescheduled from August 11, 2017 to **10:00 AM on Wednesday, August 16, 2017 at Conference Room B., Soldotna Public Library Central Library, 235 N. Binkley St., Soldotna, AK 99669**. The hearing will continue on consecutive days until concluded.¹

Dated: August 10, 2017

/s/ Ronald K. Hooks

RONALD K. HOOKS, REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 19
915 2ND AVE STE 2948
SEATTLE, WA 98174-1006

¹ The deadline for submission of the Statement of Position in this case was no later than noon Pacific time on August 10, 2017.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

APPLE BUS COMPANY

Employer

and

Case 19-RD-203378

(b) (6), (b) (7)(C) an Individual
Petitioner

and

GENERAL TEAMSTERS LOCAL 959
Union

ORDER CANCELLING HEARING

IT IS ORDERED that the hearing in the above matter set for August 16, 2017 is hereby **cancelled** due to the parties entering into a Joint Stipulation of Facts in lieu of a hearing.

Dated: August 15, 2017

/s/ Ronald K. Hooks

Ronald K. Hooks, Regional Director
NATIONAL LABOR RELATIONS BOARD
Region 19
915 2nd Ave - Ste 2948
Seattle, WA 98174-1006

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

APPLE BUS COMPANY

Employer

And

Case 19-RD-203378

(b) (6), (b) (7)(C)

Petitioner

And

GENERAL TEAMSTERS LOCAL 959

Union

DECISION AND ORDER

Petitioner seeks to decertify a unit consisting of all full-time and regular part-time school bus drivers, special service drivers, monitors, and attendants employed by the Employer and servicing the Kenai Peninsula Borough School District and summer shuttle trips, at locations from Portage to Seward and Seward to Homer, Alaska.

At issue before me is whether the instant RD petition should be dismissed under the successor bar doctrine set forth in *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011).

Based on the facts set forth in the parties' joint stipulation and the applicable case law, I find that the successor bar appropriately applies to the case before me and bars the processing of the RD petition. Accordingly, it is hereby ordered that the petition in this matter is dismissed.

I. FACTS

From at least 2008 through the end of the 2016-2017 school year, First Student, Inc. ("First Student") performed transportation services for students in the Kenai Peninsula Borough School District ("School District"), as well as shuttle transportation during the summer months.

On about February 28, 2008, the Board certified the Union as the collective-bargaining representative of all full-time and regular part-time school bus drivers, special service drivers, monitors, and attendants employed by First Student and servicing the School District and summer shuttle trips, at locations from Portage to Seward and Seward to Homer, Alaska.

The most recent collective bargaining agreement between First Student and the Union was in effect from August 1, 2015, through July 31, 2018 ("First Student Agreement").

In the fall of 2016, the School District awarded a bid for 2017-2018 school year transportation services to the Employer. On October 20, 2016, the School District entered into a contract with the Employer, effective July 1, 2017, for the provision of such services.

On February 24, 2017, the Union and the Employer first met at the Anchorage Union hall to discuss a probable collective bargaining relationship. In that meeting, the Union provided the Employer with the First Student Agreement. The stipulated record is silent as to what, if anything, else the Union and the Employer discussed at the meeting. In the few weeks following the initial meeting, the Union and the Employer had several phone calls. Although the exact nature and details of the calls are not clear from the stipulated record, the parties agree that the Union proposed, but the Employer rejected, to agree to be bound by the First Student Agreement.

In early April 2017, the Employer held driver meetings with the First Student Bargaining Unit and a representative of the Union. The following week, on April 12, 2017, the Union sent a proposed Letter of Agreement to the Employer, which referred to and adopted the First Student Agreement. Again, the Employer rejected the Union's proposal and instead counter-proposed one of its agreements with a different Teamsters local as a suggested format for a new agreement. The Union rejected the Employer's proposed agreement.

In May 2017, the Union met with the Employer and once more requested that the Employer adopt the First Student Agreement. The Employer again refused. It is uncontested that the Employer has not adopted or agreed to be bound by the First Student Agreement.

Also in May 2017 the Employer consulted with the Union and reached an oral understanding about the offers of employment and initial terms of employment for employees in the bargaining unit. Regarding wages, the offers of employment stated that wages were based on the number of years driving a bus for the School District. The stipulated record does not detail the actual wages offered to unit employees. Regarding benefits, the offers of employment indicated that the Employer would pay 75 percent of the employee-only health premiums from September through May, with a benefit plan packet made available on July 1, 2017. Finally, the offer letter provided that each employee would receive five paid floating holidays.

Shortly before June 8, 2017 the 2016-2017 school year ended, as did First Student's contract with the School District. On June 8, 2017, the Employer sent offer letters to 105 of the 126 bargaining unit employees previously employed by First Student.

On July 1, 2017, the Employer's contract with the School District officially became effective. In late June and early July 2017, the Union and the Employer engaged in bargaining over a less than ninety-day agreement to cover summer shuttle transportation services, however the parties did not reach an agreement in that matter. The stipulated record does not detail the frequency, length of time, or scope of the referenced bargaining sessions.

On July 14, 2017, the Union forwarded a Letter of Agreement providing that the Employer agree to abide by the terms and conditions set forth in the First Student Agreement. Again, the Employer declined to do so. On July 18 and 19, 2017, the Union and the Employer

met to bargain over a new collective-bargaining agreement. The parties did not reach agreement, but agreed to the following: a Declaration of Purpose article, a Recognition Clause, a Maintenance of Standards article, and a Union stewards article.

On July 31, 2017, Petitioner filed the instant RD petition seeking to decertify the Union as the collective-bargaining representative of bargaining unit employees.

On August 9, 10, and 11, 2017, the Union and the Employer met again to bargain over a new collective-bargaining agreement. As of August 11, 2017, the date of the stipulated record, the parties had not reached an agreement.

As of August 11, 2017, the Employer employed 98 former First Student bargaining unit employees and 4 new employees who did not previously work for First Student. The Employer believes that, as of August 14, 2017, it will employ 115 school bus drivers, special service drivers, monitors, and attendants in the Employer's bargaining unit.

II. ANALYSIS

A. Board Law

In *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011), the Board restored the “successor bar” doctrine previously discarded under *MV Trans.*, 337 NLRB 770 (2002). This doctrine applies “in situations where the successor has abided by its legal obligation to recognize an incumbent union, but where the ‘contract bar’ doctrine is inapplicable, either because the successor has not adopted the predecessor’s collective-bargaining agreement or because an agreement between the union and the successor does not serve as a bar under existing rules.” *UGL-UNICCO Service Co.*, 357 NLRB at 808. The Board held that in cases where the successor bar doctrine applies, “the union is entitled to a reasonable period of bargaining, during which no question concerning representation that challenges its majority status may be raised through a petition for an election filed by employees.” *Id.*

A “reasonable period of bargaining” for the purposes of the successor bar doctrine lasts “no less than 6 months, but no more than 1 year.” *Id.* This period is “measured from the date of the first bargaining session after recognition.” *Sabreliner Aviation, LLC*, 2015 WL 5564623, n.1 (NLRB 2015) (citing *UGL-UNICCO Service Co.*, 357 NLRB at 809). When less than 6 months has passed, the Board has declined to examine the number of negotiation sessions or time spent in bargaining before the filing of the petition at issue. *Id.*

In determining whether, after 6 months, a reasonable period has passed, the Board examines:

“(1) whether the parties are bargaining for an initial contract; (2) the complexity of the issues being negotiated and of the parties’ bargaining process; (3) the amount of time elapsed since bargaining commences and the number of bargaining sessions; (4) the amount of progress made in

negotiations and how near the parties are to concluding an agreement; and
(5) whether the parties are at impasse.”

UGL-UNICCO Service Co., 357 NLRB at 809 (citing *Lee Lumber & Building Material Corp.*, 334 NLRB 399, 402 (2001)). See also *FJC Security Services, Inc.*, 360 NLRB 929 (2014) (finding that no successor bar existed when petition filed because a reasonable period for bargaining had elapsed).

With regard to establishing successorship, the Board noted in *UGL-UNICCO Service Co.*, that a new employer is a successor required to recognize and bargain with an incumbent union “when there is ‘substantial continuity’ between the two business operations and when a majority of the new company’s employees had been employed by the predecessor.” 357 NLRB at 801 (citing *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 42-44, 46-47 (1987)). Except where it is perfectly clear “that the new employer plans to retain all employees in the bargaining unit,” a successor need not adopt an existing collective-bargaining relationship between the union and the predecessor employer, but rather is “free to set initial terms and conditions of employment unilaterally, without first bargaining with the union.” *Id.* at 803 (citing *NLRB v. Burns Int’l Sec. Svcs.*, 406 U.S. 272, 294-295 (1972)).

B. Application

As a preliminary matter, I find that the Employer is a successor employer to First Student. Specifically, the Employer employs well over a majority of unit employees who had previously been employed by First Student and the Employer assumed a contract for provision of the exact same services, namely transportation for the School District. As the Employer did not make perfectly clear that it would hire all First Student bargaining unit employees, and did not in fact offer to hire all First Student bargaining unit employees, the Employer was free to set initial terms and conditions of employment for its bargaining unit employees.

Moreover, I find that this is the very circumstance in which the successor bar doctrine applies, as the Employer abided by its legal obligation to recognize the Union but elected not adopt the First Student Agreement. Therefore, the Union is entitled to a reasonable period of bargaining of at least 6 months but no more than a year from the date of the first bargaining session “during which no question concerning representation that challenges its majority status may be raised through a petition for an election filed by employees.” *Id.* at 808.

Here, the Union and the Employer first met for bargaining February 24, 2017, and, a little over 5 months later, Petitioner filed the instant RD petition July 31, 2017. As Petitioner filed the RD petition in under the minimum 6 months automatically granted under the successor bar doctrine, I find that this alone is sufficient to warrant dismissing the petition. As I am bound by current Board law in my conclusions, any arguments regarding changing the successor bar doctrine are appropriately directed to the Board.

Even assuming *arguendo* that over 6 months had passed, I would nevertheless find that a reasonable period of time of under 1 year has not passed for the following reasons: the parties are

bargaining for an initial contract, the Employer had only employed some unit employees for 1 month at the time of the filing of the RD petition, the parties have participated in at least five bargaining sessions for an initial contract in the 6 weeks from the date the Employer assumed the School District contract to the date of the stipulated record, and there is no evidence that the parties are at impasse. Though the stipulated record does not reveal the amount of progress made in negotiations or how near the parties are to reaching an agreement, I conclude that the remaining factors weigh in favor of finding that a reasonable period of time had not passed prior to the filing of the RD petition.

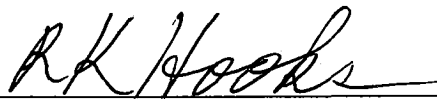
In conclusion, I find that the Employer is a successor within the meaning of the Act, that the successor bar doctrine applies, and that a reasonable period of time had not passed prior to the filing of the instant RD petition. Therefore, it is hereby ordered that the petition in this matter is dismissed.

IV. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by September 11, 2017.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: 28th of August, 2017



Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Confirmation Number	1000160878
Date Submitted	8/31/2017 10:31:19 AM (UTC-05:00) Eastern Time (US & Canada)
Case Name	Apple Bus Company
Case Number	19-RD-203378
Filing Party	Petitioner
Name	Taubman, Glenn M.
Email	gmt@nrtw.org
Address	c/o National Right to Work Legal Foundation 8001 Braddock Rd., Suite 600 Springfield, VA 22160
Telephone	(703) 321-8510
Fax	(703) 321-9319
Original Due Date	9/11/2017
Date Requested	9/25/2017

Reason for Extension of Time	<p>This is an important and novel case, in which Petitioner will seek to overturn current Board law concerning the “successor bar.” See UGL-UNICCO Service Co., 357 NLRB 801 (2011).</p> <p>Petitioner’s undersigned counsel needs sufficient time to research and draft that Request for Review. However, counsel has several important and previously-scheduled commitments, including traveling to Michigan for presentation of oral argument in the Michigan Court of Appeals on September 6, 2017 in Teamsters Local 214 v. Tina House, No. 331767; and a brief for appellant at the U.S. Court of Appeals for the Sixth Circuit due on September 19, 2017 in Ohlendorf v. UFCW Local 876, No. 17-1864. These and other previously-scheduled personal and work commitments will make it difficult to properly brief the issues involved in the Request for Review within the currently allotted time.</p> <p>Petitioner has sought the position of the other parties regarding this request for an extension of time. Counsel for the employer, Apple Bus, has no opposition. Counsel for Teamsters Local 959 states that the union does not agree that reconsideration or review is appropriate or warranted, but does not oppose this request for an extension of time. Finally, Petitioner anticipates that no further extensions of time will be sought.</p>
What Document is Due	Request for Review of RDs Decision and Order

Parties Served	<p>W. Terrence Kilroy, Esq. Polsinelli, PC 900 W. 48th Place, Suite 900 Kansas City, MO 64112 tkilroy@polsinelli.com</p> <p>Ronald K. Hooks, Director National Labor Relations Board, Region 19 915 2nd Ave., Suite 2948 Seattle, WA 98174 ronald.hooks@nlr.gov</p> <p>John Eberhart, Esq. Teamsters Local 959 520 E. 34th Avenue, Suite 102 Anchorage, AK 99503 jeberhart@akteamsters.com</p>
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United States Government

**OFFICE OF THE EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
1015 HALF STREET SE
WASHINGTON, DC 20570**

September 1, 2017

Re: Apple Bus Company
Case 19-RD-203378

EXTENSION OF TIME TO FILE REQUEST FOR REVIEW

The request for an extension of time in the above-referenced case is granted. The due date for the receipt in Washington, D.C. of Requests for Review of the Regional Director's Decision and Order is extended to **September 25, 2017**. This extension of time to file requests for review applies to all parties.

/s/ Roxanne L. Rothschild
Deputy Executive Secretary

cc: Parties
Region

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

Apple Bus Company,
Employer,

Case No. 19-RD-203378

and

General Teamsters Local 959,
Union,

and

(b) (6), (b) (7)(C)
Petitioner.

PETITIONER’S REQUEST FOR REVIEW

INTRODUCTION

Pursuant to National Labor Relations Board (“NLRB”) Rules & Regulations 102.67, Petitioner (b) (6), (b) (7)(C) files this Request for Review of the Regional Director’s August 28, 2017 dismissal of (b) (6), (b) (7)(C) decertification petition (“Petition”). The Regional Director dismissed the Petition for the sole reason that a successor employer had recently taken over the workplace.

This Request for Review seeks to overturn the “successor bar” doctrine, *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011), which a Board majority resurrected as part of its effort to entrench incumbent unions and prevent employees from

exercising their National Labor Relations Act (“NLRA” or “Act”) Sections 7 and 9 rights to reject an unwanted union, in service of “the ideological goal of insulating union representation from challenge whenever possible.” *Id.* at 810 (Member Hayes, dissenting); *see also Americold Logistics, LLC*, 362 NLRB No. 58, at *11 (Mar. 31, 2015) (Member Miscimarra, dissenting) (stating the Board is treating its “‘bar’ doctrines as [an] essential means to protect unions from decertification or displacement by a rival union”). The Board has pursued this ideological goal with vigor in recent years, in a host of related cases limiting employee free choice and preventing unions’ decertification. *See, e.g., Lamons Gasket*, 357 NLRB 739 (2011); *Americold Logistics*.

The common thread in these cases is that the Board majority pays lip service to the NLRA’s core purpose of employee free choice, *see Pattern Makers’ League v. NLRB*, 473 U.S. 95 (1985); *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 532 (1992); *Lee Lumber & Building Material Corp. v. NLRB*, 117 F.3d 1454, 1463 (D.C. Cir. 1997) (Sentelle, J., concurring), while elevating a union’s power and the perks of incumbency to the pinnacle of the NLRA’s policies. This is often done in the name of “industrial stability” for the union or employer, yet it renders employee free choice a mere afterthought. In cases like this, the “successor bar” halts employees’ ability to decertify an unwanted union solely because their employer’s identity has changed through the happenstance of a sale, buyout, reorganization, or successor

transaction. Under the successor bar, the incumbent union is entrenched and the employees' desires disregarded.

The successor bar undermines the NLRA's core purpose of employee free choice by failing to account for the employees' actual desires and past experiences with their union representative. It also fails to recognize the Board's highest calling: to conduct elections and ensure employee free choice whenever there is a question concerning representation. The successor bar's paternalistic notion that employees suffer "anxiety" in corporate reorganizations, *UGL-UNICCO*, 357 NLRB at 804, and are therefore incapable of deciding for themselves whether the incumbent union is worth keeping is fatuous.

Under NLRB Rules & Regulations 102.67(d)(1)–(4), there exists compelling reasons for the Board to grant review and reverse the successor bar, which arbitrarily saddles (b) (6), (b) (7)(C) and (b) (6), (b) fellow employees in Alaska with an unwanted incumbent union simply because the name on their paychecks has changed from First Student to Apple Bus. *UGL-UNICCO* and the successor bar have proven to be detriments to employee free choice and should be overruled so that (b) (6), (b) (7)(C) and (b) (6), (b) fellow employees can regain the ability to choose or reject their exclusive representative. Overruling *UGL-UNICCO* and the successor bar will uphold the NLRA's "bedrock principles of employee free choice and majority rule." *Gourmet Foods, Inc.*, 270 NLRB 578, 588 (1984).

Finally, this is a case of nationwide importance because this fact pattern constantly recurs as companies merge, consolidate, win and lose bids for work, and purchase each other. For all of these reasons, this case especially is worthy of Board review.

STATEMENT OF FACTS¹

Petitioner (b) (6), (b) (7)(C) (“Petitioner” or (b) (6), (b) (7)(C)) currently is employed by Apple Bus Company near Anchorage, Alaska. Stip. ¶ 5. Prior to July 1, 2017, First Student, Inc. employed (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) fellow bargaining unit employees. *Id.* at ¶ 6. On or about February 29, 2008, General Teamsters Local 959 (“Local 959” or “Union”) was certified by the NLRB to represent the First Student-Local 959 bargaining unit, in Case No. 19-RC-015059. *Id.* Thus, the employees in this bargaining unit know Local 959 very well, having been subject to its representation for over nine (9) years. *Id.*

First Student provided transportation services for school students under a contract with Kenai Peninsula Borough School District (“School District”), a public entity. *Id.* Most of the employees in the First Student bargaining unit were employed to service that contract with the School District. *Id.* at ¶ 11, 14. First Student’s most recent collective bargaining agreement with Local 959 ran from

¹ In lieu of a hearing, all parties agreed to a Joint Stipulated Record (“Stip.”), which is attached to this Request for Review along with the Regional Director’s August 28, 2017 Decision and Order. Petitioner’s Statement of Facts is derived from the Stipulation.

August 1, 2015 through July 31, 2018 (“First Student-Local 959 Agreement”). *Id.* at ¶ 6. The First Student-Local 959 Agreement was part of a larger, national agreement creating a single nationwide bargaining unit encompassing over ninety-one (91) local unions spread across the country. (*See* Appendix A to the Teamsters’ National Master First Student Agreement, which can be accessed at <https://teamster.org/first-student-teamsters-national-contracts>). The mere existence of that National Master Agreement made it virtually impossible for the Alaska-based employees working for First Student to ever decertify the Teamsters and/or Local 959 from within their small local unit. *See, e.g., First Student Anoka*, Case No. 18-RD-197717 (Order Denying Request for Review July 21, 2017); *W.T. Grant, Co.*, 179 NLRB 670 (1969) (“The unit appropriate in a decertification election must be coextensive with either the unit previously certified or the one recognized in the existing contract unit.”).

In the fall of 2016, the School District awarded Apple Bus the contract to perform transportation services for its students for the 2017–2018 school year, effectively displacing First Student. *Stip.* at ¶ 7. The School District entered into a contract with Apple Bus on October 20, 2016, effective July 1, 2017. *Id.* On July 1, 2017, First Student ceased to function as the employer of the bargaining unit employees, and Apple Bus became their new successor employer. *Id.* at ¶ 6, 7, 11. The First Student-Local 959 Agreement also ceased to govern the bargaining unit

employees' terms and condition of employment. *Id.* at ¶ 8–13.

Apple Bus and Local 959 first met on February 24, 2017 to discuss a bargaining relationship. *Id.* at ¶ 8. Apple Bus rejected Local 959's request that it simply assume and be bound by the First Student-Local 959 Agreement. *Id.* Apple Bus similarly responded to an identical request on or about April 12, 2017. *Id.* at ¶ 9.

On June 8, 2017, which was shortly after the end of the 2016–2017 school year and near the end of First Student's relationship with the School District, Apple Bus sent employment offers to 105 of the 126 former First Student-Local 959 bargaining unit employees, with work to commence on August 14, 2017. *Id.* at ¶ 11, 14. As of the date the parties' Stipulation was signed, 98 former First Student-Local 959 unit employees and 4 additional hires who previously did not work for First Student had accepted offers for bargaining unit positions. *Id.* at ¶ 14. Apple Bus believes that when all of the positions are filled, it will employ 115 school bus drivers, special service drivers, monitors, and attendants in its new bargaining unit. *Id.*

On July 14, 2017, Local 959 sent a Letter of Agreement (“LOA”) to Apple Bus stating that Apple Bus agrees “to abide by the terms and conditions of the current (First Student) Teamster Local 959 Agreement” and that the LOA “would expire on October 1, 2017 or upon the ratification of a new CBA between the Union and the Company, whichever is later.” *Id.* at ¶ 12. Apple Bus declined to sign the LOA.

Id.

Local 959 and Apple Bus met to bargain over a new collective bargaining agreement on July 18 and 19, 2017, but again reached no agreement. *Id.* at ¶ 13. In those sessions, the two parties agreed to the following: a “Declaration of Purpose article,” a “Recognition Clause,” a “Maintenance of Standards article,” and a “Union Stewards article.” *Id.* Apple Bus and Local 959 met again on August 9, 10, and 11, 2017, with no agreement reported. *Id.* To date, Apple Bus has not adopted or agreed to be bound by the First Student-Local 959 Agreement. *Id.* at ¶ 10.

On July 31, 2017, (b) (6), (b) (7)(C) filed this Petition to decertify Local 959 as the bargaining unit’s representative. All parties signed a Joint Stipulation in Lieu of Hearing, which is attached. On August 28, 2017, the Regional Director dismissed (b) (6), (b) (7)(C) Petition based on the successor bar doctrine adopted by a divided Board in *UGL-UNICCO Service Co.* (Copy attached). This Request for Review follows.

ARGUMENT IN SUPPORT OF REVIEW

Factually, this case is simple: a bargaining unit of bus drivers and allied workers no longer wishes to be represented by the Union they have known for *nine* years, which surely is enough time for the employees to have assessed the Union’s effectiveness, credibility, and worth. On this basis, the employees submitted a decertification Petition to NLRB Region 19 to vindicate their NLRA Sections 7

and 9 rights. 29 U.S.C. §§ 157 and 159(a). Indeed, Petitioner believes that (b) (6), (b) collected signatures from a majority of employees in the unit for (b) (6), (b) showing of interest against continued union representation. However, the so-called “successor bar,” a doctrine created by a divided Board to entrench incumbent unions at all costs, has thwarted these employees from exercising their right to choose or reject a bargaining representative. (See Regional Director’s Decision and Order dated August 28, 2017).

The most recent iteration of the successor bar is relatively new. In 2011, the *UGL-UNICCO* Board majority overruled *MV Transportation*, 337 NLRB 770 (2002), and announced that it was implementing a modified version of the successor bar first developed in *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999). However denominated, all iterations of the successor bar should be overturned, as they are inconsistent with the Act’s most important principle—employee free choice—and fly in the face of Supreme Court and U.S. Courts of Appeals’ precedent protecting that free choice.

A. *UGL-UNICCO* and other “bar” cases were wrongly decided.

The Board majority in *UGL-UNICCO* overstated the successor bar’s past relevance and importance. Before 1981, the Board had never adopted a successor bar doctrine, and, in fact, had rejected such a doctrine in *Southern Moldings, Inc.*, 219 NLRB 119 (1975); see *UGL-UNICCO*, 357 NLRB at 803. *Southern Moldings*

recognized that the successor “stands in the shoes of the predecessor vis-à-vis the [u]nion,” meaning that the union is not entitled to a more secure position with the successor than it had with the original employer. 219 NLRB at 119–20. Thus, if the union had a rebuttable presumption with the previous employer, it is entitled to only that presumption with the successor. *Id.*

The first time the Board adopted any type of successor bar was in 1981 in *Landmark International Trucks*, 257 NLRB 1375 (1981), which the Sixth Circuit swiftly vacated in *Landmark International Trucks, Inc. v. NLRB*, 699 F.2d 815 (1983). At its next opportunity, the Board adopted the Sixth Circuit’s rationale against any successor bar, *see Harley-Davidson Co.*, 273 NLRB 1531 (1985), and the lack of a successor bar remained the state of the law for many years. Then, in 1999, the Board again adopted a successor bar in *St. Elizabeth Manor*, 329 NLRB 341 (1999). This was short lived, however, as the Board promptly repudiated the successor bar three (3) years later in *MV Transportation*, 337 NLRB 770 (2002).

MV Transportation recognized that “the position articulated by the Board in *Southern Moldings* represents the appropriate balance between employee freedom of choice and the maintenance of stability in bargaining relationships.” *Id.* at 773. *MV Transportation* understood that the rebuttable presumption of majority status allows employees “who have firsthand knowledge of, and experience with, the union’s ability, attentiveness and performance, [to] properly . . . determine whether

the incumbent union is adequately representing their interests during the period of transition.” *Id.* (internal quotations omitted). This rebuttable presumption provides a sufficient check against labor instability without excessively infringing upon employees’ Section 7 rights. *Id.* at 775. *MV Transportation* concluded:

[A] democracy, by its nature, undergoes the turmoil of frequent elections. But that is a price that we gratefully pay for a free society. Incumbent public officials are subject to elections at periodic intervals. Incumbent unions are not. Thus, to allow for free choice, we subject the unions to challenge at certain times when employees objectively indicate that they no longer desire representation by the union. [The successor bar] would take away that choice for an undefined period of time.

Id. at 775–76.

In short, since the NLRA’s passage in 1935, the successor bar has been a part of Board precedent and policy for only nine (9) years, or eleven (11) years including the vacated *Landmark International* decision. *See MV Transp.*, 337 NLRB at 770 (“For decades, with one brief and unsuccessful deviation, the Board, with court approval, balanced the competing interests involved in favor of protecting employee freedom of choice and held that employees retained their statutory right to vote following a change of employers.”).

The Board majority in *UGL-UNICCO* recognized that “whether to establish a ‘successor bar’ presents an important policy choice, a choice which . . . calls on the Board to consider the larger, sometimes competing goals of the statute.” 357 NLRB at 804. However, the Board majority’s subsequent implementation of the

successor bar failed to accomplish the NLRA's *overriding* goal: employee free choice. Indeed, the NLRA's very purpose is "voluntary unionism," *Pattern Makers'*, 473 U.S. at 107, and Section 7 "guards with equal jealousy employees' selection of the union of their choice and their decision not to be represented at all," *Baltimore Sun Co. v. NLRB*, 257 F.3d 419, 426 (4th Cir. 2001). Although it is the "NLRA's core principle that a majority of employees should be free to accept or reject union representation," *Conair Corp. v. NLRB*, 721 F.2d 1355, 1381 (D.C. Cir. 1983), the successor bar ignores the Petitioner's and her co-workers' equal right to reject representation. *See also NLRB v. B.A. Mullican Lumber & Mfg. Co.*, 535 F.3d 271, 284 (4th Cir. 2008) (noting that because the NLRA protects employee free choice, the Board "may not appropriately seek a bargaining order . . . that it knows is contrary to the will of a majority of the employees").

Here, the successor bar is thwarting the Apple Bus employees' determination to rid themselves of an unwanted representative. Former Chairman Hurtgen rightly recognized that none of the arguments in the successor bar's favor "considered separately, or as a whole, warrant deprivation of employees' Section 7 rights." *Williams Energy Servs.*, 336 NLRB 160, 162 (2001) (Chairman Hurtgen, dissenting). This especially rings true here, where the Petitioner and the bargaining unit employees have known Local 959 for *nine* (9) years, thereby making their ability to discern its worth (or lack thereof) self-evident.

In addition to being a controversial doctrine within the Board, the successor bar is in conflict with federal jurisprudence that consistently (and correctly) holds a union's presumption of majority support in a successor situation is *rebuttable*, rather than conclusive.² First, as noted above, the Sixth Circuit vacated the Board's creation of this bar in *Landmark International Trucks*, 699 F.2d 815. The Sixth Circuit elaborated that:

[t]here is no reason to treat a change in ownership of the employer as the equivalent of a certification or voluntary recognition of a union following an organization drive. . . . [W]here the union has represented the employees for a year or more a change in ownership of the employer does not disturb the relationship between employees and the union. . . . A successor's duty to continue recognition under such circumstances is no different from that of any other employer after the certification year expires.

Id. at 818–19.³

Consistent with the Sixth Circuit, the Supreme Court held in *Fall River Dyeing & Finishing Corp. v. NLRB* that if “the union has a *rebuttable presumption* of majority status, this status continues despite the change in employers.” 482 U.S.

² In a break with other circuit courts and the Supreme Court, the First Circuit granted extraordinary deference to the Board and refused to strike down the successor bar in *NLRB v. Lily Transportation Co.*, 853 F.3d 31 (2017).

³ The Sixth Circuit's reasoning remains apropos today. The successor bar mischaracterizes the relationship at issue in a decertification petition. In a decertification petition, the *employees* are attempting to disassociate themselves from the *union*. It simply does not matter that the employer is new to the relationship. The Apple Bus employees already are familiar with Local 959, having lived under its yoke and prior contracts for nine (9) years. Due to that preexisting relationship, employees are well aware of the Union's positives and negatives, and can freely make an informed choice as to whether it deserves to stay. Contrary to the Board's often paternalistic view, employees are neither fools nor sheep. *Lee Lumber*, 117 F.3d at 1463–64 (Sentelle, J., concurring).

27, 41 (1987) (emphasis added). Finally, the Seventh Circuit in *Randall Division of Textron, Inc. v. NLRB* noted “[g]enerally, a successor employer, like any other employer, may withdraw its recognition of a union at any time after one year from the union’s original certification.” 965 F.2d 141, 148 (1992) (citations omitted).

Following these precedents, the successor bar’s implementation has generated significant and repeated opposition within the Board. *See, e.g., Sabreliner Aviation, LLC*, Case No. 14-RD-135815, 2015 WL 5564623, at *1 (Sept. 21, 2015) (Member Miscimarra, dissenting); *FJC Security Serv. Inc.*, 360 NLRB 929, 929 (2014) (Member Miscimarra, concurring); *UGL-UNICCO*, 357 NLRB at 813 (Member Hayes, dissenting); *St. Elizabeth Manor*, 329 NLRB at 346–50 (Members Hurtgen & Brame, dissenting).

At its core, the successor bar is designed to protect incumbent unions and exalt their interests over the Petitioner’s and (b) (6), (b) co-workers’ free choice rights. The successor bar favors the former, while the Act’s principles demand the latter’s protection. The Board majority’s decision in *UGL-UNICCO* is based on a claim of “industrial peace,” 357 NLRB at 805 (citing *Fall River*, 482 U.S. at 38), but there can be no “peace” through a policy that surrenders an entire bargaining unit’s will to an unwanted union’s whims, all based upon a change of name on the employees’ paychecks. “The Board must never forget that unions exist at the pleasure of the employees they represent. Unions *represent* employees; employees do not exist to

ensure the survival or success of unions.” *MGM Grand Hotel, Inc.*, 329 NLRB 464, 475 (1999) (Member Brame, dissenting). The Board’s successor bar allows incumbent unions to do the very thing unions claim to fight—oppress and exploit powerless workers through a large, powerful, and sophisticated organization.

B. Employee free choice should prevail.

Even putting to one side the Board’s history of policy oscillations over controversial doctrines, the successor bar doctrine is based upon a demonstrably faulty assumption: that employees cannot be trusted to make their own representational decisions during uncertain economic times. *See MV Transp.*, 337 NLRB at 773 n.12 (“Rather than relying on the employees’ own judgments, the Board majority in *St. Elizabeth Manor* appeared to rely on a paternalistic assumption that the employees in a successor employer situation need the protection of an insulated period . . . to make an informed decision regarding the effectiveness of their bargaining representative.”). This assumption cannot bear scrutiny, for if it were true, employees also should be denied elections any time the stock market tanks, their company’s owner nears retirement age, or when government regulatory agencies enact rules and policies that diminish the employer’s profitability and make continued operations difficult.

Employees are not children who must be protected from themselves or the free market’s fluctuations. They should be free to make their own choices about union

representation and paying money to a union they do not support, even during times of economic uncertainty or upheaval. *Lee Lumber*, 117 F.3d at 1463–64 (Sentelle, J., concurring) (“To presume that employees are such fools and sheep that they have lost all power of free choice based on the acts of their employer, bespeaks the same sort of elitist Big Brotherism that underlies the imposition of the invalid bargaining order in this case.”).

Besides disparaging employees’ judgment and capabilities, the successor bar improperly balances “stability” versus employee free choice. As correctly noted by then Member (now Chairman) Miscimarra, the successor bar provides no stability because it is impossible to know when it starts or ends. *See FJC Security Services, Inc.*, 360 NLRB at 929 (Member Miscimarra, concurring). The successor bar, as defined by *UGL-UNICCO*, is at least six (6) months and up to one (1) year from the first *bargaining session*, 357 NLRB at 809, not from the time the successor is first obligated to bargain with the union. Therefore, the successor bar prevents petitions from being filed before the bar even begins to run, as parties’ first bargaining meetings often occur long after a duty to bargain attaches. *See Americold Logistics*, 362 NLRB No. 58 (involving parties who did not meet until four (4) months after the voluntary recognition occurred). Unless employees are privy to the schedule of the employer and union’s bargaining sessions, they will have no idea when the successor bar begins to run.

Even after the initial six-month bar, a Region still may dismiss the petition for *another* six-month period. During the period between six months and a year after bargaining begins, a decertification petitioner must show a reasonable time to bargain has elapsed, based on a multi-factor test derived from *Lee Lumber & Building Material Corp.*, 334 NLRB 399, 402 (2001):

The factors we will consider in determining whether the initial 6-month insulated period should be extended are: (1) whether the parties are bargaining for an initial contract; (2) the complexity of the issues being negotiated and of the parties' bargaining processes; (3) the amount of time elapsed since bargaining commenced and the number of bargaining sessions; (4) the amount of progress made in negotiations and how near the parties are to concluding an agreement; and (5) whether the parties are at impasse.

*Id.*⁴

Depending on what has happened in bargaining, the bar may last for only six months, a year, or somewhere in between. The reliance on a multi-factor test with shifting results necessitates that employees opposing a union file multiple petitions, month-after-month, until they are granted an election. *See Student Transp. of Am.*, Case No. 06-RD-127208 (Decision and Direction of Election, June 5, 2014)

⁴ *Lee Lumber's* application is particularly inapposite in this decertification context because those factors are used to decide whether a reasonable time has passed when dealing with an *unfair labor practice*. Putting aside that case's facts, application of its factors in the decertification context can lead to strange results. For example, one of the factors is how near the parties are to an agreement. *Lee Lumber*, 334 NLRB at 402. The Board has noted that if the parties are far away from reaching an agreement, they should be given more time to bargain and the petition should be dismissed. But, if they are close to reaching an agreement, the parties also should be given more time to bargain and the petition should be dismissed. *See MGM Grand Hotel*, 329 NLRB at 465. Thus, an employee may file a petition too early and then refile a month later and be too late. Employee rights should not be so dependent upon threading a needle, especially one over which they have no control.

(employees in a successor situation were required to file *four* different petitions until the Region finally granted an election, which the union lost by an overwhelming 88-13 vote).

There is nothing “stable” about requiring multiple decertification filings, as that only serves to burden employees and undermine their ability to exercise free choice. Requiring employees to collect new showings of interest and to repeatedly file petitions only serves to frustrate them and heighten their cynicism about the NLRB’s fairness and processes. Finally, there is nothing stable about saddling employees with a union they oppose. To the contrary, such forced representation by a minority union leads to widespread workplace *instability* and discontent. *Int’l Ladies Garment Workers v. NLRB*, 366 U.S. 731, 737 (1961) (noting “[t]here could be no clearer abridgment of § 7 of the Act . . . ” than for a union and employer to enter into a collective bargaining relationship when a majority of employees do not support union representation).

In short, Apple Bus employees in Alaska have known Teamsters Local 959 for *nine* years and are more than capable of weighing its value. A majority of the employees signed Petitioner’s showing of interest, and those employees simply want the opportunity to express their democratic right to decline representation. This is especially true now that they are freed from a nationwide First Student bargaining unit that made decertification a practical impossibility. Indeed, Local

959 was unpopular before the successor employer took over, but the Alaska bargaining unit was effectively barred from seeking an election because it was lumped into a nationwide First Student unit. Now that a new employer is in place and this small group of Alaskan employees can stand alone, they should be permitted to do so at once by the successor bar's reversal.

CONCLUSION

The Board should grant Petitioner (b) (6), (b) (7)(C) Request for Review and order the Regional Director to reinstate and promptly process this Petition. It also should overrule the controversial "successor bar" doctrine, which arbitrarily blocks the decertification of unwanted incumbent unions.

Respectfully submitted,

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JOINT STIPULATION

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

APPLE BUS COMPANY

Employer

and

Case 19-RD-203378

GENERAL TEAMSTERS LOCAL 959

Union

and

(b) (6), (b) (7)(C)

Petitioner

JOINT STIPULATED RECORD IN LIEU OF HEARING

It is stipulated by the undersigned parties that:

1. General Teamsters Local 959 ("Union") is a labor organization within the meaning of § 2(5) of the National Labor Relations Act, as amended ("Act").
2. Apple Bus Company ("Employer") is an employer engaged in commerce within the meaning § 2(6) and § 2(7) of the Act and is subject to the jurisdiction of the Board. Further:

The Employer, Apple Bus Company, a State of Missouri corporation with a facility in Soldotna, Alaska, provides full service transportation services. Within the past twelve months, a representative period, the Employer received gross revenue valued in excess of \$500,000 and purchased and received at its Soldotna, Alaska facility, goods valued in excess of \$50,000 directly from points outside the State of Alaska.

3. The Union currently represents a bargaining unit composed of ("Bargaining Unit"):

Included: All full-time and regular part-time school bus drivers, special service drivers, monitors, and attendants employed by the Employer and servicing the

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Kenai Peninsula Borough School District and summer shuttle trips, at locations from Portage to Seward and Seward to Homer, Alaska.

Excluding: All office clerical employees, mechanics, school crossing guards, dispatchers, and guards, and supervisors as defined by the National Labor Relations Act.

4. The unit described in Paragraph 3, above, is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.
5. The Petition in the instant case was filed on July 31, 2017, by (b) (6), (b) (7)(C) ("Petitioner"). A copy of the Petition and service of the Petition are attached hereto as Exhibit A.
6. Prior to July 1, 2017, First Student, Inc. ("First Student"), performed transportation services for students at Kenai Peninsula Borough School District ("School District") and shuttle transportation during the summer months. First Student employed the Bargaining Unit which was represented by the Union. The Union was certified on or about February 29, 2008, by the National Labor Relations Board in Case 19-RC-015059. The Union's most recent collective bargaining agreement with First Student covering the Bargaining Unit was from August 1, 2015, through July 31, 2018 ("First Student Agreement").
7. In the Fall of 2016, the Employer was awarded a bid by the School District to perform the transportation services for students at the School District for the 2017-18 school year. The School District entered into a contract with the Employer on October 20, 2016, effective July 1, 2017, attached hereto as Exhibit B.
8. The Employer and the Union first met on February 24, 2017, at the Anchorage Teamster Hall and discussed a probable bargaining relationship. In that meeting the Union provided the Employer with the current First Student Agreement. In the next few weeks, there were several calls between representatives of the Employer and the Union in which the Union proposed but the Employer rejected agreeing to be bound by the First Student Agreement.
9. In early April 2017, the Employer held driver meetings with the First Student Bargaining Unit and representatives of the Union. The following week, on April 12, 2017, the Union sent a proposed Letter of Agreement to the Employer which referred to and adopted the First Student Agreement with the Union. The Employer rejected that proposal and instead proposed one of its agreements with a different Teamster Local as a proposed format for a new agreement. The Union rejected the Employer's proposed agreement.
10. The Employer has not adopted or agreed to be bound by the First Student Agreement with the Union. The Union again requested in a May 2017 meeting

WTR [Signature]

that the Employer adopt the First Student Agreement. The Employer again rejected the Union's proposal to adopt the First Student Agreement. While the Union and the Employer engaged in bargaining in late June and early July 2017 over a less than ninety-day agreement to cover summer shuttle transportation services, no agreement covering that work has been reached.

11. In May 2017, the Employer consulted with the Union and reached an oral understanding about the offers of employment and initial terms of employment for members of the Bargaining Unit. Offers of employment indicated the position offered, the wages which were based on the number of years driving a bus for the School District and the "Medical and Ancillary Benefit Options". In the offer letter, the Employer offered to pay seventy-five (75%) percent of the employee only health premiums from September through May with a Benefit Plan packet made available on July 1, 2017. The offer letter also provided that each employee would receive five (5) Paid Floating Holidays. The offers were sent to the Bargaining Unit by the Employer on June 8, 2017, which was shortly after the end of the 2016-17 school year and the end of the First Student relationship with the School District. 105 of 126 former First Student Bargaining Unit members were offered employment in their previous positions commencing August 14, 2017. As of the date of this stipulation, ninety-eight (98) former First Student unit employees and four (4) hires who did not work for First Student have accepted offers for Bargaining Unit positions. The Employer believes that, as of August 14, 2017, it will employ one-hundred fifteen (115) school bus drivers, special service drivers, monitors, and attendants in the new Bargaining Unit.
12. On July 14, 2017, the Union forwarded a Letter of Agreement (LOA) providing that the Employer agrees "to abide by the terms and conditions of the current (First Student) Teamster Local 959 Agreement" and that the LOA "would expire on October 1, 2017 or upon the ratification of a new CBA between the Union and the Company, whichever is later." The Employer declined to sign the LOA.
13. The Union and the Employer met to bargain over a new collective bargaining agreement on July 18 and 19, 2017, but no agreement was reached. In those sessions, the Employer and Union agreed to the following: a "Declaration of Purpose article," a "Recognition Clause," a "Maintenance of Standards article" and a "Union Stewards article." The Employer and the Union met again on August 9, 10 and 11, 2017.
14. Only twelve (12) drivers were on the Employer's payroll prior to the filing of the Petition. Those working during the payroll period pending immediately prior to the filing of the Petition were drivers who are performing shuttle trips for Homer Tours in the Soldotna and Seward, Alaska areas. They were not working under the Kenai Peninsula Borough School District contract. Bargaining Unit employees

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will report for training for the School District work on August 14, 2017.¹ The expected bargaining unit on the first day of work will be approximately one-hundred fifteen (115) school bus drivers, special service drivers, monitors and attendants.

W. T. Kibony
Counsel for the Employer

8/11/17
Date

John Eberhart
Counsel for the Union

8/11/2017
Date

John I. Iano
Counsel for Petitioner

8/11/17
Date

RK Hooks
Ronald K. Hooks,
Regional Director
Date: 8/14/17

¹ The Employer had raised a potential seasonality issue with the majority of the bargaining unit not being present until on or after August 14, 2017. As the Decision and Direction of Election will issue after August 14th, the issue is moot and need not be considered further.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

APPLE BUS COMPANY

Employer

and

Case 19-RD-203378

GENERAL TEAMSTERS LOCAL 959

Union

and

(b) (6), (b) (7)(C)

Petitioner

JOINT STIPULATED RECORD IN LIEU OF HEARING

It is stipulated by the undersigned parties that:

1. General Teamsters Local 959 ("Union") is a labor organization within the meaning of § 2(5) of the National Labor Relations Act, as amended ("Act").
2. Apple Bus Company ("Employer") is an employer engaged in commerce within the meaning § 2(6) and § 2(7) of the Act and is subject to the jurisdiction of the Board. Further:

The Employer, Apple Bus Company, a State of Missouri corporation with a facility in Soldotna, Alaska, provides full service transportation services. Within the past twelve months, a representative period, the Employer received gross revenue valued in excess of \$500,000 and purchased and received at its Soldotna, Alaska facility, goods valued in excess of \$50,000 directly from points outside the State of Alaska.

3. The Union currently represents a bargaining unit composed of ("Bargaining Unit"):

Included: All full-time and regular part-time school bus drivers, special service drivers, monitors, and attendants employed by the Employer and servicing the

Jme

Kenai Peninsula Borough School District and summer shuttle trips, at locations from Portage to Seward and Seward to Homer, Alaska.

Excluding: All office clerical employees, mechanics, school crossing guards, dispatchers, and guards, and supervisors as defined by the National Labor Relations Act.

4. The unit described in Paragraph 3, above, is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.
5. The Petition in the instant case was filed on July 31, 2017, by (b) (6), (b) (7)(C) ("Petitioner"). A copy of the Petition and service of the Petition are attached hereto as Exhibit A.
6. Prior to July 1, 2017, First Student, Inc. ("First Student"), performed transportation services for students at Kenai Peninsula Borough School District ("School District") and shuttle transportation during the summer months. First Student employed the Bargaining Unit which was represented by the Union. The Union was certified on or about February 29, 2008, by the National Labor Relations Board in Case 19-RC-015059. The Union's most recent collective bargaining agreement with First Student covering the Bargaining Unit was from August 1, 2015, through July 31, 2018 ("First Student Agreement").
7. In the Fall of 2016, the Employer was awarded a bid by the School District to perform the transportation services for students at the School District for the 2017-18 school year. The School District entered into a contract with the Employer on October 20, 2016, effective July 1, 2017, attached hereto as Exhibit B.
8. The Employer and the Union first met on February 24, 2017, at the Anchorage Teamster Hall and discussed a probable bargaining relationship. In that meeting the Union provided the Employer with the current First Student Agreement. In the next few weeks, there were several calls between representatives of the Employer and the Union in which the Union proposed but the Employer rejected agreeing to be bound by the First Student Agreement.
9. In early April 2017, the Employer held driver meetings with the First Student Bargaining Unit and representatives of the Union. The following week, on April 12, 2017, the Union sent a proposed Letter of Agreement to the Employer which referred to and adopted the First Student Agreement with the Union. The Employer rejected that proposal and instead proposed one of its agreements with a different Teamster Local as a proposed format for a new agreement. The Union rejected the Employer's proposed agreement.
10. The Employer has not adopted or agreed to be bound by the First Student Agreement with the Union. The Union again requested in a May 2017 meeting

June

that the Employer adopt the First Student Agreement. The Employer again rejected the Union's proposal to adopt the First Student Agreement. While the Union and the Employer engaged in bargaining in late June and early July 2017 over a less than ninety-day agreement to cover summer shuttle transportation services, no agreement covering that work has been reached.

11. In May 2017, the Employer consulted with the Union and reached an oral understanding about the offers of employment and initial terms of employment for members of the Bargaining Unit. Offers of employment indicated the position offered, the wages which were based on the number of years driving a bus for the School District and the "Medical and Ancillary Benefit Options" In the offer letter, the Employer offered to pay seventy-five 75% percent of the employee only health premiums from September through May with a Benefit Plan packet made available on July 1, 2017. The offer letter also provided that each employee would receive five (5) Paid Floating Holidays. The offers were sent to the Bargaining Unit by the Employer on June 8, 2017, which was shortly after the end of the 2016-17 school year and the end of the First Student relationship with the School District. 105 of 126 former First Student Bargaining Unit members were offered employment in their previous positions commencing August 14, 2017. As of the date of this stipulation, ninety-eight (98) former First Student unit employees and four (4) hires who did not work for First Student have accepted offers for Bargaining Unit positions. The Employer believes that, as of August 14, 2017, it will employ one-hundred fifteen (115) school bus drivers, special service drivers, monitors, and attendants in the new Bargaining Unit.
12. On July 14, 2017, the Union forwarded a Letter of Agreement (LOA) providing that the Employer agrees "to abide by the terms and conditions of the current (First Student) Teamster Local 959 Agreement" and that the LOA "would expire on October 1, 2017 or upon the ratification of a new CBA between the Union and the Company, whichever is later." The Employer declined to sign the LOA.
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14. Only twelve (12) drivers were on the Employer's payroll prior to the filing of the Petition. Those working during the payroll period pending immediately prior to the filing of the Petition were drivers who are performing shuttle trips for Homer Tours in the Soldotna and Seward, Alaska areas. They were not working under the Kenai Peninsula Borough School District contract. Bargaining Unit employees

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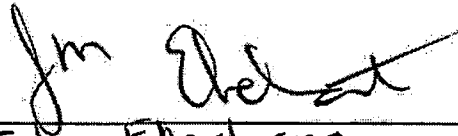
will report for training for the School District work on August 14, 2017.¹ The expected bargaining unit on the first day of work will be approximately one-hundred fifteen (115) school bus drivers, special service drivers, monitors and attendants.

Terry Kilroy

8/11/2017

Counsel for the Employer

Date


John Eberhart
Counsel for the Union


11. August 2017
Date

Glenn Taubman

8/11/2017

Counsel for Petitioner

Date


Ronald K. Hooks,
Regional Director
Date: 8/14/17

¹ The Employer had raised a potential seasonality issue with the majority of the bargaining unit not being present until on or after August 14, 2017. As the Decision and Direction of Election will issue after August 14th, the issue is moot and need not be considered further.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

APPLE BUS COMPANY

Employer

and

Case 19-RD-203378

GENERAL TEAMSTERS LOCAL 959

Union

and

(b) (6), (b) (7)(C)

Petitioner

JOINT STIPULATED RECORD IN LIEU OF HEARING

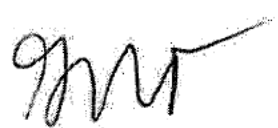
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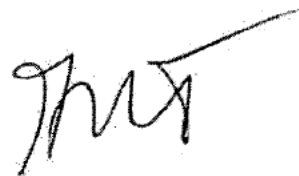
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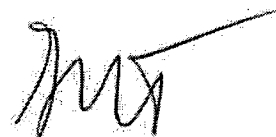
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A handwritten signature in black ink, appearing to be 'JMS', located in the bottom right corner of the page.

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Terry Kilroy

8/11/2017

Counsel for the Employer

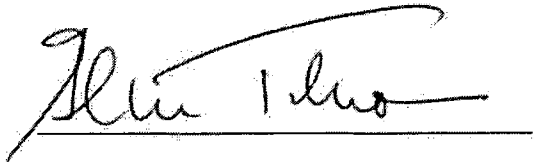
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John Eberhart

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**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

APPLE BUS COMPANY

Employer

and

GENERAL TEAMSTERS UNION LOCAL 959

Union

and

(b) (6), (b) (7)(C)

Petitioner

Case No. 19-RD-203378

THE EMPLOYER'S REQUEST FOR REVIEW

I. INTRODUCTION

Pursuant to National Labor Relations Board ("Board") Rules and Regulations 102.67(c), the Employer Apple Bus Company ("Employer") files this Request for Review of the Regional Director's August 28, 2017 Decision and Order that the Petition in this matter be dismissed. The dismissal was based on *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011), which interpreted the National Labor Relations Act ("Act") to provide for a "successor bar" which would restrict employees' right to decertify after there has been a change in ownership. The Employer asserts there are "compelling reasons for reconsideration" of *UGL-UNICCO Service Co.*, which this Board should reconsider as a basis to grant this Request for Review.¹

II. FACTS

In the proceedings before the Regional Director, the Employer believed it was bound by existing case law and the Petition was barred because of *UGL-UNICCO*. The Employer has

¹ The Exhibits attached to Petitioner's brief are incorporated herein by reference.

operations in a number of states, with represented and non-represented workforces. However, the Employer desires that its employees decide for themselves whether they wish to be represented by General Teamsters Local 959 ("Union"). A review of *UGL-UNICCO* demonstrates its premises are faulty and accordingly the case wrongly decided. Based on that principle, the Employer files this Request for Review in hopes the Board will review the stipulated facts in this case and conclude that *UGL-UNICCO* was wrongly decided and the problems foreseen by Chairman Hurtgen in *MV Transportation*, 337 NLRB 770 (2002) with application of the successor bar were prophetic.

The Employer is a school bus company which was awarded the transportation services for Kenai Peninsula Borough School District (the "District") to transport its students for the 2017-18 school year. Stip ¶7² The transportation services had previously been provided by First Student, Inc. ("First Student") since 2008 and were scheduled at the time of the vote to change to complete the 2016-17 school year. Stip ¶6 The First Student drivers, special service drivers, monitors and attendants were represented by the Union for over nine years prior to Apple Bus being awarded the transportation work by the District for the 2017-18 school year. Stip ¶6 The most recent collective bargaining agreement between First Student and the Union commenced August 1, 2015 and was scheduled to expire on July 31, 2018. Stip ¶6 Thus, it has been over two and one-half years since there has been a "window" to file an RD Petition.

Shortly after being awarded the bid by the District, the Employer reached out to begin discussions with the Union. Stip ¶8 Indeed, the Employer offered to and met with the Union to begin a relationship almost six months before the school year commenced. Stip ¶8 In February

² There was a Joint Stipulated Record attached to the Petitioner's Request for Review along with the Regional Director's August 28, 2017 Decision and Order. That Joint Stipulated Record is attached to Petitioner's Request for Review. References to those stipulated facts are cited as ("Stip").

2017, the Employer met with the Union at the Anchorage Union Hall to discuss a probable bargaining relationship. Stip ¶8 That meeting was followed by a series of phone calls and letters between the Union and the Employer. Stip ¶¶8 and 9 In those discussions the Union repeatedly demanded the Employer agree to be bound by the First Student agreement with the Local. *Id.* The Employer rejected those demands, instead suggesting they discuss a different contract format it had with another Teamster local union. Stip ¶9

The Employer did nothing to create an impression with its prospective workforce that it was hostile to a Union. Indeed, in April, 2017, the Employer held driver meetings with the First Student bargaining unit employees; representatives of the union were invited by the Employer and were present at the meeting. Stip ¶9 At the end of the 2016-17 school year (May, 2017), the Employer again met with the Union; the Union yet again demanded the Employer agree to be bound by the First Student agreement--but the demand was again rejected. Stip ¶10

While the Employer did not adopt the First Student contract, it did not unilaterally impose new terms and conditions of employment on the employees. In May, the Employer consulted with the Union and reached an oral understanding about the offers of employment and the initial terms of employment to be offered to the applicants for these positions. Stip ¶11 The Employer offered positions to 105 of the 126 former First Student bargaining unit employees. *Id.* Those offer letters were mailed on June 8, 2017. *Id.* The Employer planned to hire 115 drivers, special drivers, monitors and attendants to start work on August 14, 2017. *Id.*; Stip ¶15

On July 6, 2017, the Employer received a Petition signed by a majority of its new bargaining unit employees indicating they did not wish to be represented by the Union. The

Employer did not review the Petition but forwarded the Petition to counsel.³ Because of the *UGL-UNICCO* decision, the Employer declined to take any action and commenced bargaining with the Union.

The Employer and Union commenced face-to-face negotiations on July 18 and 19, 2017. Stip ¶13 The Union and Employer reached agreement on a “Declaration of Purpose,” a Recognition Clause; a Maintenance of Standards and a Union Stewards Article in those first dates. *Id.* The Union and the Employer met in collective bargaining again for three days in August. Stip 13

III. ARGUMENT: UGL-UNICCO WAS INCORRECTLY DECIDED

UGL-UNICCO, finding a “successor bar” was incorrectly decided. It failed to afford sufficient weight to “employee freedom of choice, (which) is a bedrock principle of the statute (the Act).” *St. Elizabeth Manor*, 329 NLRB 341, 344. (1999) The Act recognizes our national labor policy (is to protect) the exercise by workers of full freedom of association...” Section 7 of the Act, as amended, made clear that “full freedom of association, self-organization and designation of a representative of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection” are at the core of the Act. 29 U.S.C. §151.

A. The Basis for UGL-UNICCO’s successor bar were unsupported

The Employer agrees with Petitioner that *UGL-UNICCO* was incorrectly decided and defers to Petitioner’s excellent summary of the history of the “successor bar” and the flaws in the previous cases which adopted the “successor bar” prior to *UGL-UNICCO*. The Employer agrees

³ The Petition stated “The undersigned employees of Apple Bus Co. do not wish to be represented by General Teamsters Local 959.” There were sixty-five (65) signatures supporting the Petition.

with Petitioner that the Board has only validated the “successor bar” doctrine for a very limited period during the Agency’s eighty (80) year history.

As the Petitioner’s brief also points out, the issue of a successor bar involves balancing employee freedom of choice with maintenance of stability in bargaining relationships. As the Board stated in *John Deklewa & Sons*, 282 NLRB 1374, 1380 (1987):

Two of the overreaching objectives of the National Labor Relations Act are the promotion and protection of employee free choice and labor relations stability... (The) Board law must be measured by the degree to which it achieves an appropriate balance between the dual congressional objectives of promoting and maintaining employee free choice principles and labor relations stability. *Id.* At 1382

The *UGL-UNICCO* majority’s finding of a successor bar incorrectly balances those overreaching objectives to give too much deference to stability in bargaining thereby denying employees’ freedom of choice.

The Employer will focus on the flaws in the majority opinion in *UGL-UNICCO* and utilize the facts of this case to demonstrate those flaws.

Because of previous judicial hostility to its successor bar by the Sixth Circuit, *Landmark Int. Trucks v. NLRB*, 699 F.2d 819, 818-19 (6th Cir.), the *UGL-UNICCO* majority incorrectly bootstrapped language from the Supreme Court to find “instability inherent in successorship situations” which “threatens to seriously destabilize collective bargaining.” *UGL-UNICCO* at 804-05. It is on these slender reeds the majority in *UGL-UNICCO* finds a need for a successor bar. The majority in *UGL-UNICCO* erroneously based these conclusions on quotes from *Fall River Dying Corp. v. NLRB*, 482 U.S. 27 (1987) where the Supreme Court observed that a “presumption of majority support for a union was necessary because employees may be inclined to shun support for a union especially if they believe that support could jeopardize an offer of a job from the new employer.”

But the Supreme Court did not suggest that the anxiety over the job offers should create an irrefutable presumption of continued support for the Union or that that anxiety would continue after offers of employment had been made by the new employer and their jobs secure. Indeed, the Supreme Court favorably cited *Harley Davidson*, 273 NLRB 1531 (1985), which rejected the successor bar. The Supreme Court noted that “the successor may lawfully withdraw from negotiations at any time following recognition if it can show the union had in fact lost its majority status...or that the refusal to bargaining was grounded on a good faith doubt based on objective factors that the union continued to command majority support.”⁴

The majority in *UGL-UNICCO* dismissed the Supreme Court’s language in *Fall River* as “a single footnote” and “merely a description of the legal landscape at the time.” *UGL-UNICO*, *supra* at 806. However, Member Hayes dissented, stating “the Supreme Court does not rummage through the decisional attic...and randomly decide which cases to cite and which to ignore, as mere examples of extant law *UGL-UNICCO*, *supra* at 811 (Member Hayes, dissenting).

The *UGL-UNICCO* majority’s opinion that successorship “threatens to seriously destabilize collective bargaining” is based in part on the right of a new employer to hire a new work force. However, by the time successorship is established, those employment decisions have already been made and bargaining is required. The “anxiety” mentioned by *Fall River* and bootstrapped by the *UGL-UNICCO* majority to support a “successorship bar” is nothing but a red herring.

⁴ Since *Fall River* and *Harley-Davidson*, the bargaining representative has additional protections as good faith doubt is no longer a sufficient basis to withdraw recognition unless the Union has actually lost its majority. See *Levitz Furniture Co.* 333 NLRB 717 (2001)

The fallacy need for a “successorship bar” based on the “destabilized” argument is demonstrated by the facts in this case. Here, the Employer reached out to the Union nearly six months before it commenced employment and has regular contact with the Union. The Employer met with the bargaining unit members of the First Student with Union present! The Employer also consulted with the Union prior to sending out its offers of employment containing its initial terms of employments - and the union and the Employer reached an agreement about these offers of and initial terms and conditions of employment. No employee or applicant would perceive “anxiety” or a “destabilized collective bargaining” in this situation. Yet the *UGL-UNICCO* majority’s successorship bar uses the prior anxiety argument to prevent Petitioner and other employees from exercising their bedrock principle of employee free choice.

Furthermore, the Employer commenced bargaining with the Union prior to decertification petition being filed and reached a number of agreements in those first two days of bargaining. There was nothing “destabilizing” about this situation such that a “bedrock principle” of Act of Employee free choice should be trampled upon. The facts of this case demonstrate the majority in *UGL-UNICCO* improperly balanced employee free choice to give priority to stability in bargaining relationship.

B. The Successor Bar of *UGL-UNICCO* insufficiently accommodates employee free choice.

As Petitioner points out, *UGL-UNICCO* adopts the standard to delay decertification elections after an employer has committed unfair labor practices by refusing to bargain with an incumbent Union. *UGL-UNICCO*, *supra* at 808, relying upon *Lee Lumber & Building Materials Corp.*, 334 NLRB 399 (2001) Application of *Lee Lumber* is a five factor test and the “up to twelve” month bar has no precedent in the earlier unsuccessful efforts by the Board to establish a

“successor bar.” The *Lee Lumber* test is too indefinite and creates too long an insulated period in a successorship situation.

By using *Lee Lumber*, the employees are thereby kept in the dark as to when they can file a Petition; alternatively, after six months of bargaining, they are required to keep filing petitions for decertifications until one is granted or twelve months have passed. This cumbersome and illogical procedure puts too heavy an obstacle blocking the exercise of employee free choice.

Furthermore, the majority in *UGL-UNICCO*’s effort to purportedly accommodate employee free choice to prevent the successor bar’s application to deny a decertification period for more than three years fails in its objective. The majority in *UGL-UNICCO* held that where a first contract with the incumbent union is reached by the successor employer within a reasonable time, and there was no “open period” during the final year of the predecessor’s labor agreement, a new contract can only bar a decertification petition for two years instead of the normal three.

But this “accommodation” would mean up to a five year period before this Petitioner and (b) (6), (b) (7)(C) co-bargaining unit members could vote on whether to keep the Union as its representative. Petitioner has had a two year period with no open period and is now faced with up to a twelve-month delay during bargaining before a decertification petition can be filed. If the Employer and Union reach a new agreement for two or more year period, Petitioner and (b) (6), (b) (7)(C) co-workers will have to face up to a five year period between their “open periods.”

Making matters worse for Petitioner and (b) (6), (b) (7)(C) fellow supporters is that they have been part of a multi-site, First Student bargaining unit.⁵ As a result, filing a decertification petition has been nearly impossible unless at least thirty (30%) of the entire multi-site unit signs the petition

⁵ See Appendix A to Teamsters National Master First Student Agreement <https://teamster.org/first-student-teamsters-national-contracts> and discussion in Petitioner’s brief detailing the multi-site unit.

supporting decertification. Thus, the Petitioner has likely been trapped—unable to file a petition for many years. Now, application *UGL-UNICCO* potentially extends that trap even longer. These facts demonstrate a successor bar imposes too heavy a burden on employees' right to exercise free choice.

C. *UGL-UNICCO* does not provide stability in a bargaining relationship

Employee free choice should override the goal of stability in bargaining—especially since the goal of bargaining stability in a successorship with a pending decertification petition is illusory. In *MV Transportation*, 337 NLRB 770 (2002) the Board stated:

In reality, if a large percentage (or majority) of the employees support a petition to decertify or change the bargaining representative, the situation has reached maximum instability and to fail to resolve the issue with a Board-conducted election simply aggravates that instability further. Instability is, in fact, preserved and increased rather than relieved.

Id. At 774 (emphasis added) The Board went on to note that Member Liebman concedes that there would be an incentive for an employer to not reach an agreement--if a union is lacking majority support. *Id.*

MV Transportation is “spot on” on the instability created by a successor bar once a decertification petition is filed. This employer is facing this instability as a result of the “successor bar” which is frustrating employees wanting an election. The Employer is dealing with a large number of requests by the Union to “inspect the premises”. Are those efforts to campaign on company premises? It is inevitable in a “campaign” that there will be tensions and arguments between the competing camps. What is the impact on the work force and Union if those go on for twelve months?

Would it not be better to hold an election so these tensions and constant campaigning would not go on for up to twelve months? Would not the Union's position and strength at the

bargaining table not be enhanced if a secret ballot election were held and it won? Clearly the bargaining “stability” allegedly created by a successorship bar where the employees want to decertify is illusory and should not outweigh employees’ fundamental right of free choice.

IV. CONCLUSION

For all the above reasons, the Board should grant Petitioner’s and the Employer’s Requests for Review and order the Regional Director to process the Petition.

Respectfully Submitted,

/s/ W. Terrence Kilroy
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mweisman@polsinelli.com

Counsel for Apple Bus Company

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2017, a true and correct copy of the Employer's Request for Review was filed electronically with the Executive Secretary using the NLRB e-filing system and copies were sent to the following via email:

Glen M. Taubren
Amanda K. Freeman
c/o National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, Virginia 22160

Ronald K. Hooks, Director
National Labor Relations Board
Region 19
915 2nd Ave. Suite 2948
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/s/ W. Terrence Kilroy
W. Terrence Kilroy

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

APPLE BUS COMPANY

Employer

and

GENERAL TEAMSTERS LOCAL 959

Union

and

(b) (6), (b) (7)(C)

Petitioner

Case No. 19-RD-203378

UNION'S OPPOSITION TO REQUESTS FOR REVIEW

I. INTRODUCTION

On the same day, September 25, 2017, Petitioner (b) (6), (b) (7)(C), represented by the National Right to Work Legal Defense Foundation, Inc., and Apple Bus Company (Employer), pursuant to National Labor Relations Board (Board) Rules and Regulations 102.67(c), each filed a Request For Review of the Regional Director's August 28, 2017 Decision and Order that the Petition in this matter be dismissed. The Regional Director's dismissal was based on *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011), and the successor bar doctrine. Board Rules and Regulations 102.67(d) provides, "*Grounds for review*. The Board will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds: ... (4) That there are compelling reasons for reconsideration of an important Board rule or policy." (Emphasis added). Each Request For Review appears to rely only on 102.67(d)(4). General Teamsters Local 959 (Union) files this

Opposition. The Union incorporates by reference the Joint Stipulated Record In Lieu Of Hearing (Stipulation).

II. FACTS

The Union previously represented certain employees of First Student, Inc. performing services for the Kenai Peninsula Borough School District. Stipulation 6. After being awarded a bid (not the contract as (b) (6), (b) (7)(C) Request For Review mistakenly claims, page 5, first sentence of last paragraph) in the Fall of 2016, the Employer entered into a contract to perform those services, effective July 1, 2017. Stipulation 7. The Union and the Employer took part in a meet and greet on February 24, 2017. Stipulation 8.

Over the next several months, the Union asked the Employer to agree to be bound by the First Student collective bargaining agreement but the Employer refused. The Union rejected a proposed agreement presented by the Employer. Stipulation 8-10.

On June 8, 2017, the Employer mailed out job offer letters. 105 of 126 former First Student bargaining unit members were offered employment starting August 14, 2017. By the date of the Stipulation, August 11, 2017, 98 former First Student employees and 4 hires who had not worked for First Student accepted Bargaining Unit positions with the Employer. The Employer expected to employ 115 Bargaining Unit members by August 14, 2017. Stipulation 11, 14.

Employer states (Employer Request For Review, pages 3-4) that on July 6, 2017 it received a Petition signed by a majority of its new bargaining unit employees indicating that they did not wish to be represented by the Union. The Employer claims that it did not review the Petition but forwarded the Petition to counsel. The Petition signatures were apparently gathered at First Student, not at Apple Bus, since most Bargaining Unit members would not be employed at Apple Bus until August 14, 2017. The Union was not told by the Employer about its receipt of the Petition. The Union only learned about this during the course of later proceedings.

A decertification petition was filed on July 31, 2017 by (b) (6), (b) (7)(C) Stipulation 5. Only 12 drivers were on the Employer's payroll before the filing of the decertification petition. None of them were working under the contract the Employer had with the Kenai Peninsula Borough School District. Stipulation 14. The Employer's job offer letters did not offer employment to former First Student bargaining unit members until August 14, 2017. Stipulation 11.

The Union and the Employer did not substantively bargain until late June or early July 2017. Stipulation 10. Negotiations for a new collective bargaining agreement did not start until July 18 and 19, 2017. At that time, tentative agreement was reached on articles addressing Declaration of Purpose, Recognition, Maintenance of Standards, and Union Stewards. The Union and the Employer met again on August 9, 10, and 11, 2017 for negotiations. Stipulation 13. More negotiations have been conducted since August 11, 2017. Based on the foregoing, the Union urges that the successor bar should not start running until late June 2017 at the earliest.

The Employer has never questioned the Union's majority status and tentatively agreed to a Recognition article. Stipulation 13. While the Employer has attended negotiations with the Union over a new collective bargaining agreement, the Union must question the Employer's good faith, and whether the Employer is surface bargaining, in view of the pace of negotiations and the Employer's Request For Review and support of an election aimed at decertifying the Union.

The Employer claims (Employer Request For Review, page 3) that it did nothing to create an impression with its prospective workforce that it was hostile to the Union and that it did not unilaterally impose new terms and conditions of employment on the employees. However, the Union understands that as part of the application process, the Employer required applicants to acknowledge receipt of the Employer's handbook (which imposed new terms and conditions of employment) and required employees to acknowledge that they were at-will employees. Attached

are the first 6 pages of the handbook. The Employee Acknowledgement Form is the final attached page. Despite the language of the Employee Acknowledgement Form, the Union understands that handbooks were not in fact given to applicants at the time they completed their applications, but only later given out when each employee started work.

(b)(6), (b)(7)(C) Request For Review claims (page 4, first sentence) that this is a case of nationwide importance. To the contrary, the Union urges that this is a case that only involves the successor doctrine as properly applied by the Regional Director to the Union and Employer in one remote area.

III. ARGUMENT IN OPPOSITION TO REVIEW: NO COMPELLING REASONS FOR RECONSIDERATION; UGL-UNICCO WAS CORRECTLY DECIDED

Webster's II New Riverside University Dictionary defines "compel" or "compelling" as, "1. To force, drive, or constrain, 2. To make necessary." While the Petitioner and Employer wish to see the law changed, the Union urges that there are no compelling or necessary reasons to do so. The Requests For Review set forth no proper, let alone compelling, reasons for reconsideration. The Requests For Review do not raise, allege, or reference any fact, circumstance, argument, legal precedent, or claim that was not in existence and clearly before the Regional Director when he rendered his decision. The Requests For Review do nothing more than ask the Board, with changed membership, to review the same evidence, argument, and prior Board precedent considered by the Regional Director, but reach an opposite result. This is not a proper basis for reconsideration. See *New York University*, 356 NLRB 18 (2010) (Member Hayes dissenting).

UGL-UNICCO Service Co., 357 NLRB 801 (2011), a decision supported by four of the five members of the Board (only Member Hayes dissented), addressed whether the Board should restore the "successor bar" doctrine, discarded in *MV Transportation*. Under the doctrine, when a successor employer acts in accordance with its legal obligation to recognize an incumbent

representative of its employees, the previously chosen representative is entitled to represent the employees in collective bargaining with their new employer for a reasonable period of time, without challenge to its representative status. *UGL* at 801, citing *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999).

In *UGL*, as here, the National Right to Work Legal Defense and Education Foundation filed an amicus brief urging the Board to apply *MV Transportation*. *UGL* at 802.

Referring to *Lamons Gasket*, 357 NLRB No. 72 (2011), decided the same day as *UGL*, the Board stated that analogous bar doctrines are well established in labor law, based on the principle that “a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed.” *UGL* at 801, citing *Franks Bros. Co. v. NLRB*, 321 US 702, 705 (1944). The bar doctrines promote a primary goal of the National Labor Relations Act by stabilizing labor-management relationships and so promoting collective bargaining, without interfering with the freedom of employees to periodically select a new representative or reject representation. *UGL* at 801.

The basic rules of labor-law successorship, as developed by the Supreme Court and by the Board, are well established. A new employer is a successor to the old – and thus required to recognize and bargain with the incumbent labor union – when there is “substantial continuity” between the two business operations and when a majority of the new company’s employees had been employed by the predecessor. *UGL* at 802, citing *Fall River Dyeing Corp. v. NLRB*, 482 US 27, 42-44, 46-47 (1987). The Regional Director’s Decision and Order (page 4) found that Apple Bus is a successor employer.

A successor is not required to adopt the existing collective bargaining agreement between its predecessor and the union. Rather, except in situations where it is “perfectly clear that the new

employer plans to retain all of the employees in the [bargaining] unit,” the successor is free to set initial terms and conditions of employment unilaterally, without first bargaining with the union. *UGL* at 802-803, citing *NLRB v. Burns Security Services*, 406 US 272, 287-291, 294-295 (1972). Here, the Employer did not adopt the existing collective bargaining agreement (Stipulation 10) but, instead, through its handbook and otherwise, unilaterally set initial terms and conditions of employment. The *UGL* Board observed that during a transition between employers, a union is in a peculiarly vulnerable position. It has no formal and established bargaining relationship with the new employer.” *UGL* at 802, citing *Fall River*, *supra*, at 39. Here, the Union has had its hands full trying to inform and protect its members during the transition from First Student to Apple Bus, while at the same time defending against (b) (6), (b) (7)(C) decertification petition, while at the same time trying to get Apple Bus to engage in serious negotiations for a collective bargaining agreement (at a time when Apple Bus has now joined (b) (6), (b) (7)(C) attempt to get an election to decertify the Union, thereby likely signaling to employees that Apple Bus supports the decertification effort), while at the same time having to defend against these Requests For Review.

A. *UGL-UNICCO* provides stability for a bargaining relationship

The *UGL* Board realistically observed that the transition from one employer to another threatens to seriously destabilize collective bargaining, even when the new employer is required to recognize the incumbent union. The new employer is free to choose (on any non-discriminatory basis) which of the predecessor’s employees it will keep and which will go. It is free to reject any existing collective bargaining agreement. It will often be free to establish unilaterally all initial terms and conditions of employment: wages, hours, benefits, job duties, tenure, disciplinary rules, and more. In a setting where everything that employees have achieved through collective bargaining may be swept aside, the union must now deal with a new employer and, at the same time, persuade employees that it can still effectively represent them. *UGL* at 805.

As to the possible, if not likely, effect of a successor situation on employees, the *UGL* Board, citing *Fall River*, observed, "After being hired by a new company following a layoff from the old, employees initially will be concerned primarily with maintaining their new jobs. *In fact, they might be inclined to shun support for their former union, especially if they believe that such support will jeopardize their jobs with the successor or if they are inclined to blame the union for their layoff and problems associated with it.* Without the presumptions of majority support and with the wide variety of corporate transformations possible, an employer could use a successor enterprise as a way of getting rid of a labor contract and of exploiting the employees' hesitant attitude towards the union to eliminate its continuing presence." *UGL* at 803.

In *St. Elizabeth Manor*, the Board described the "successor bar" as intended to protect the newly established bargaining relationship and the previously expressed majority choice, taking into account that the stresses of the organizational transition may have shaken some of the support the union previously enjoyed. *UGL* at 804 (other citations omitted).

An insulated period for the union clearly promotes collective bargaining. It enables the union to focus on bargaining, as opposed to shoring up its support among employees, and to bargain without being "under exigent pressure to produce hothouse results or be turned out," pressure that surely does not make reaching agreement easier. An insulated period also increases the incentives for successor employers to bargain toward an agreement. "It is scarcely conducive to bargaining in good faith for an employer to know that, if he dillydallies or subtly undermines, union strength may erode and thereby relieve him of his statutory duties at any time...." *UGL* at 807 (other citations omitted).

The *UGL* Board noted that successorship situations have become increasingly common in the last three decades. *UGL* at 801. The number and scale of corporate mergers and acquisitions

has increased dramatically over the last 35 years. *UGL* at 805. Regulatory agencies like the Board “are supposed, within the limits of the law and of fair and prudent administration, to adapt their rules and practices to the nation’s needs in a volatile changing economy.” *UGL* at 801, citing *American Trucking Assns. v. Atchison T. & S.F. Ry. Co.*, 387 US 397, 416 (1967).

The Board was persuaded that restoring the “successor bar” doctrine better achieves the overall policies of the Act, in the context of today’s economy, than does the approach of *MV Transportation*, which has its origins in a bygone era and which fails to come to terms with the practical and legal dynamics of labor-law successorship. *UGL* at 801. However, the Board modified the “successor bar” doctrine to mitigate its potential impact on employees who might wish to change representatives or reject representation altogether. *UGL* at 801. A bar creates a conclusive presumption of majority support for only a defined period of time. *UGL* at 803.

B. The successor bar adequately protects employee free choice

(b) (6), (b) (7)(C) Request For Review repeatedly refers to the Union as unwanted by Bargaining Unit members who allegedly have dealt with the Union for nine years. (b) (6), (b) (7)(C) alleges that the only change has been the name on the paychecks from First Student to Apple Bus (see (b) (6), (b) (7)(C) Request for Review, page 2, line 2; page 3, second full paragraph, lines 4-5; page 4, first paragraph after the heading Statement of Facts, last sentence; page 7, first sentence after the heading Argument In Support Of Review; page 11, last paragraph; page 12, footnote 3; page 13, last paragraph, third sentence; page 17, first full paragraph, third sentence and last paragraph, first sentence). (b) (6), (b) (7)(C) fails to point out that the Employer has never questioned the Union’s majority status; the decertification petition was signed by persons who were not yet employees of Apple Bus; the employees at Apple Bus are not all the same persons as the former employees at First Student; some Apple Bus employees did not work for First Student; and the terms and conditions of employment have changed from those at First Student as a result of the Apple Bus handbook, for

which applicants had to sign the Employee Acknowledgement Form, including agreeing that they are at-will employees.

The *UGL* Board noted that the *St. Elizabeth Manor* Board rejected the view that the “successor bar” gave too little weight to employee freedom of choice, which it recognized as a “bedrock principle of the statute.” The Board’s contract-bar and certification bar doctrines are examples of similar attempts to strike a balance between the Act’s sometimes competing policies of promoting stable collective bargaining relationships and permitting employees periodically to freely choose or reject continued representation. The crucial aspect of the balance struck by the “successor bar” was that the bar “extends for a ‘reasonable period,’ not in perpetuity.” *UGL* at 804, 808 (other citations omitted).

The *UGL* Board defined the reasonable period of bargaining mandated by the successor bar. In the situation where the successor employer recognizes the union, but unilaterally announces and establishes initial terms and conditions of employment before proceeding to bargain, the “reasonable period of bargaining” will be a minimum of 6 months and a maximum of 1 year, measured from the date of the first bargaining meeting between the union and the employer. The Board will apply the multifactor analysis of *Lee Lumber* to determine whether the period has elapsed. In cases where the parties are bargaining for an initial contract, because the destabilizing factors associated with successorship are at their height, a longer insulated period is appropriate. *UGL* at 808-809. The *Lee Lumber* multifactor analysis considers (1) whether the parties are bargaining for an initial contract; (2) the complexity of the issues being negotiated and of the parties’ bargaining processes; (3) the amount of time elapsed since bargaining commenced and the number of bargaining sessions; (4) the amount of progress made in negotiations and how near the parties are to concluding an agreement; and (5) whether the parties are at impasse. *UGL* at 808-

809. Employees will have the opportunity to reject the incumbent union when the temporary “successor bar” expires. *UGL* at 807, fn. 24. The *UGL* Board provided further protection to employee free choice by limiting the possible combined operation of a successor bar and contract bar to a maximum of 2 years. *UGL* at 810.

The Employer claims that it is dealing with a large number of requests by the Union to “inspect the premises.” The Employer suggests that these are efforts to campaign on the premises of the Employer. The Union is not inspecting the premises. Instead, the Union has visited non-work areas on non-work time to address numerous issues for members. The Union and the Employer have agreed to such visits with advance notice by the Union.

IV. CONCLUSION

For the above and other reasons, *UGL-UNICCO* was correctly decided. The Union respectfully urges that it should be adhered to and this Board should deny (b) (6), (b) (7)(C) and the Employer’s Requests for Review.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2017, a true and correct copy of the Union's Opposition to Requests for Review was filed electronically with the Executive Secretary using the NLRB e-filing system and copies were sent to the following by email:

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John Eberhart
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General Teamsters Local 959



Employee Handbook

Apple Bus Company



Welcome!

You have just become part of a dedicated team of employees and managers. We hope that your association with APPLE BUS COMPANY will be rewarding, challenging, and of mutual benefit. We take pride in our employees as well as the products and services we provide. We consider ourselves leaders in the field of APPLE BUS COMPANY.

Please take the time to read this employee handbook carefully. It is an important communication and management document. Please initial each page and date and sign the acknowledgment form on the preceding page to show that you have read, understood and agree to the contents of this handbook. This handbook provides most of the terms and conditions of an employee's employment.

Understand that no employee handbook can address every situation in the workplace. If you have any difficulty reading or understanding any of the provisions of this manual, please contact a member of the management team. APPLE BUS COMPANY will gladly make assistance available so you can understand the policies and what is expected of you. If you do not request assistance, APPLE BUS COMPANY will assume that you fully understand the handbook. Likewise, if you have any suggestions related to company policies or procedures, please let us know.

We wish you success in your employment with APPLE BUS COMPANY!

Sincerely,

(b) (6), (b) (7)(C)

APPLE BUS COMPANY

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INTRODUCTION

This handbook is designed to acquaint employees with Apple Bus Company and provide information about working conditions, employee benefits, and some of the policies affecting employment. An employee should read, understand, and comply with all provisions of the handbook. It describes many employee responsibilities and outlines the benefit programs developed by Apple Bus Company. The handbook is not a contract. However, your compliance with it is a condition of your employment. One of the objectives is to provide a work environment that is conducive to both personal and professional growth.

This employee handbook is our attempt to keep employees informed of the terms and conditions of their employment, including company policies and procedures. Apple Bus Company reserves the right to revise, add or delete from this handbook regarding the terms or conditions of an employee's employment to the extent allowable by law. The only policy that will remain unchanged is our employment-at-will policy, allowing any active employee or Apple Bus Company to terminate employment with Apple Bus Company at any time for any reason. Employees will be notified when there are changes made to the handbook. No oral statements or representations can change the provisions of this handbook. If you believe any provisions of the handbook conflict with your understanding of the terms or conditions of your employment, you should immediately speak to your supervisor for clarification.

Waiver of Breach

The waiver by Apple Bus Company of any violation of any term or condition set forth in this employee handbook shall not operate as a waiver of any subsequent violation. No waiver shall excuse compliance with the provisions of the employee handbook unless placed in writing and signed by an officer of Apple Bus Company.

Employee Acknowledgement Form

I acknowledge that this handbook is neither a contract of employment nor a legal document. I have received the handbook, and I understand that it is my responsibility to read and comply with the policies contained in this handbook and any revisions made to it.

The employee handbook describes important information about Apple Bus Company, and I understand that I should consult my supervisor or the Apple Bus Company Home Office regarding any questions not answered in the handbook. I have entered into my employment relationship with Apple Bus Company voluntarily and acknowledge that there is no specified length of employment. Accordingly, either Apple Bus Company or I can terminate the relationship at-will, with or without cause, at any time, so long as there is no violation of applicable federal or state law.

Since the information, policies, and benefits described here are necessarily subject to change, I acknowledge that revisions to the handbook may occur, except to Apple Bus Company's policy of employment-at-will. All such changes will be communicated through official notices, and I understand that revised information may supersede, modify, or eliminate existing policies. Only the President, Vice-President, or Director of Support Services of Apple Bus Company has the ability to adopt any revisions to the policies in this handbook.

I acknowledge that I have received, reviewed, and understand my personal copy of the Apple Bus Company Employee Handbook. In consideration of my employment with Apple Bus Company, I agree to observe and abide by the conditions of employment, policies, and rules contained in this Handbook. I also understand and agree to all other company policies set forth including, but not limited to, those of prohibiting sexual harassment and discrimination, non-disclosure, and confidentiality policy.

I further understand and agree that my employment is entered into voluntarily and at all times shall remain "at-will". Just as I am free to resign at any time and for any reason, Apple Bus Company is free to terminate my employment at any time, for any reason. I understand that the terms and conditions set forth in this handbook represent the entire understanding between Apple Bus Company and me and that this understanding cannot be amended or altered in any way by oral statements made to me. The only way in which any understanding set forth in this handbook can be altered is by written agreement signed and dated by the President, Vice-President, or Director of Support Service of Apple Bus Company.

I understand that I have the right and ability to have this Employee Handbook reviewed by an attorney of my choosing and that I sign this Acknowledgment of Receipt and Review without duress or misunderstanding. One copy of this Acknowledgment of Receipt and Review must remain in this handbook at all times. The other copy will be placed in my personnel file.

EMPLOYEE'S NAME (printed): _____

EMPLOYEE'S SIGNATURE: _____

DATE: _____

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

APPLE BUS COMPANY,

Employer

and

Case 19-RD-203378

(b) (6), (b) (7)(C)

Petitioner

and

GENERAL TEAMSTERS LOCAL 959,

Union

ORDER

The Petitioner's and Employer's respective Requests for Review of the Regional Director's Decision and Order are denied as they raise no substantial issues warranting review.¹

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., December 14, 2017.

¹ Member Emanuel disagrees with the successor bar holding in *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011), and would return to the approach taken by the Board in *MV Transportation*, 337 NLRB 770 (2002), but in the absence of a Board majority to overrule *UGL-UNICCO*, he agrees that it applies in this case and that the Requests for Review should be denied.

To: Terrence Kilroy
Mark W. Weisman
Julie Cisco
Glenn M. Taubman
Amanda K. Freeman
(b) (6), (b) (7)(C)
John Eberhart
Michael Petrovich
Region 19
Ronald K. Hooks

Attached is an Order that issued December 14, 2017 in the above-subject case.